

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MO GELBER

Plaintiff,

- against -

GUEST OF A GUEST, INC.

Defendant.

Docket No. 1:17-cv-7446

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Mo Gelber (“Gelber” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Guest of a Guest, Inc. (“Guest”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a photograph of a famous photograph named “Last Kiss” which depicts a couple kissing while being handcuffed by police officers and brought to criminal court, owned and registered by Gelber, a professional photographer. Accordingly, Gelber seeks injunctive and monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is transacting business in New York and is registered to do business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Gelber is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 953 East 31st Street, Brooklyn, New York 11210.

6. Upon information and belief, Guest is a foreign business corporation duly organized and existing under the laws of the State of the Delaware, with a place of business at 33 Little West 12th Street, Suite 7, New York, New York 10014. Upon information and belief, Guest is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Guest has owned and operated the website: www.Guestofaguest.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Gelber photographed a couple kissing while being handcuffed by police officers (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Gelber is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-062-548.

B. Defendant's Infringing Activities

10. Upon information and belief, Guest ran an article on the Website entitled 7 *Crimes Worth The Time in New York*. See <http://guestofaguest.com/new-york/nyc/the-7-crimes-worth-committing-in-new-york>. The article prominently featured the Photograph on the Website. A true and correct copy of the article is attached hereto as Exhibit B.

11. Guest did not license the Photograph from Plaintiff for its article, nor did Guest have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST GUEST)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Guest infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the the Photograph on the Website. Guest is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Guest have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST GUEST
(17 U.S.C. § 1202)

19. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

20. When the Photograph was published it contained copyright management information under 17 U.S.C. § 1202(b).

21. Upon information and belief, in its article on the Website, Guest intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph and replaced such with false, altered and inaccurate copyright management information that falsely identified the photographer of the Photograph.

22. The conduct of Guest violates 17 U.S.C. § 1202(b).

23. Upon information and belief, Guest's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

24. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Guest intentionally, knowingly and with the

intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. Guest also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph.

25. As a result of the wrongful conduct of Guest as alleged herein, Plaintiff is entitled to recover from Guest the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Guest because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

26. Alternatively, Plaintiff may elect to recover from Guest statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Guest be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That, with regard to the First Claim for Relief, Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of

copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);

5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203 (b);
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 28, 2017

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